

CRAIG FRANCIS SZEMPLE,

Plaintiff,

v.

RUTGERS, THE STATE UNIVERSITY  
OF NEW JERSEY, et al.,

Defendants.

Civil Action No. 10-5445 (PGS) (DEA)

**MEMORANDUM OPINION AND ORDER**

1. Plaintiff filed the Complaint pro se on October 10, 2010. (ECF No. 1).
2. On May 7, 2012, this Court dismissed Defendants NJDOC, Lanigan and Mee sua sponte from the action and ordered the Clerk of the Court to issue summonses to the remaining defendants, including Thomas Farrell and Dr. Herschkowitz. (ECF Nos. 9, 12, 14).
3. The summons for Dr. Herschkowitz were returned unexecuted on October 16, 2012. (ECF No. 24).
4. The summons for Thomas Farrell were returned unexecuted on November 27, 2012. (ECF No. 28).
5. At the time the complaint was filed, Rule 4(m) of the Federal Rules of Civil Procedure required the complaint to be served within 120 days. To date, no proof of service as to Thomas Farrell and Dr. Herschkowitz has been filed with the Court.
6. On March 20, 2018, the Court ordered Plaintiff to show cause within 30 days why the claims against Thomas Farrell should not be dismissed without prejudice for failure to

effectuate proper service. (ECF No. 149). It entered a similar order regarding Dr. Herschkowitz on April 16, 2018. (ECF No. 155).

7. Plaintiff responded on May 3, 2018. (ECF No. 157). He argued he had in fact served Drs. Herschkowitz and Woodward, and that his counsel should have followed-up on any service problems. He attached the summons indicating the Marshals had been unable to locate Dr. Herschkowitz at the address Plaintiff provided and that Dr. Woodward's wife had been served on August 31, 2012. (ECF No. 157 at 8-9). He also included a copy of the summons to Thomas Farrell. (ECF No. 157 at 10).

8. Plaintiff's arguments regarding Dr. Woodward are irrelevant. The Court's orders to show cause were limited to Dr. Herschkowitz and Thomas Farrell. Dr. Woodward was properly served and has been an active participant in this litigation until he was dismissed by summary judgment motion on March 27, 2018. (ECF No. 151).

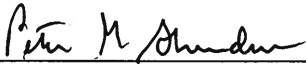
9. Plaintiff has not shown good cause for failure to timely serve Thomas Farrell and Dr. Herschkowitz. The fact that counsel, who represented Plaintiff for less than one year, did not serve defendants does not adequately explain why Plaintiff did not attempt to reserve Thomas Farrell and Dr. Herschkowitz in the five years this litigation has been ongoing.

IT IS therefore on this 22 day of Jan, 2019,

**ORDERED** that the Clerk shall reopen the matter for entry of this order; and it is further

**ORDERED** that all claims against Thomas Farrell and Dr. Herschkowitz are dismissed for failure to effectuate proper service, Fed. R. Civ. P. 4(m); and it is finally

**ORDERED** that the Clerk shall serve a copy of this Order upon Plaintiff by regular mail. The Clerk shall **administratively terminate** this matter pending confirmation from Defendants the matter was settled (*see* ECF No. 165).

  
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PETER G. SHERIDAN  
United States District Judge